

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jihan Varisco	Team: Team # 5	CCRB Case #: 201111655	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 07/21/2011 11:30 AM	Location of Incident: Avenue A between East 4th and East 5th Streets	Precinct: 09	18 Mo. SOL 1/21/2013	EO SOL 1/21/2013	
Date/Time CV Reported Fri, 09/09/2011 4:00 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 09/09/2011 4:00 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			009 PCT
2. SGT Timothy Brown	00714	923427	009 PCT
3. DI Kenneth Lehr	00000	891719	009 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Liliana Prendergast	02531	928930	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Timothy Brown	Force: Sgt. Timothy Brown pointed his gun at § 87(2)(b) and § 87(2)(b)	
B. Officers	Force: Officers pointed their guns at § 87(2)(b) and § 87(2)(b)	
C.DI Kenneth Lehr	Discourtesy: DI Kenneth Lehr spoke obscenely and/or rudely to § 87(2)(b)	
D.SGT Timothy Brown	Abuse: Sgt. Timothy Brown supervised the frisk of § 87(2)(b)	
E.SGT Timothy Brown	Abuse: Sgt. Timothy Brown supervised the search of § 87(2)(b)	

Case Summary

On September 9, 2011, § 87(2)(b) and § 87(2)(b) filed this complaint in person at the CCRB.

On July 21, 2011, at approximately 11:30 a.m., § 87(2)(b) and § 87(2)(b) were pulled over by Sgt. Timothy Brown of the 9th Precinct on Avenue A between East 4th and East 5th Streets in Manhattan. The following allegations resulted:

- **Allegation A – Force:** Sgt. Timothy Brown pointed his gun at § 87(2)(b) and § 87(2)(b) § 87(2)(g)
- **Allegation B – Force:** Officers pointed their guns at § 87(2)(b) and § 87(2)(b) § 87(2)(g)
- **Allegation C – Discourtesy:** DI Kenneth Lehr spoke obscenely and/or rudely to § 87(2)(b) § 87(2)(g)
- **Allegation D – Abuse of Authority:** Sgt. Timothy Brown supervised the frisk of § 87(2)(b) § 87(2)(g)
- **Allegation E – Abuse of Authority:** Sgt. Timothy Brown supervised the search of § 87(2)(b) § 87(2)(g)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- *At the time of his interview, § 87(2)(b) was a § 87(2)(b)-old Hispanic male, 5'9", weighing 220 lbs, with black hair and brown eyes. § 87(2)(b)*

CCRB Testimony

On September 9, 2011, § 87(2)(b) was interviewed at the CCRB (encl. 4).

On July 21, 2011, at approximately 11:30 a.m., § 87(2)(b) was driving his van, a dark blue Plymouth Voyager, south on Avenue A in Manhattan. He had just made a left turn off East 5th Street. § 87(2)(b) s roommate, was in the passenger seat. § 87(2)(b) explained that his registration had expired so he was keeping the van in Manhattan but periodically moving it due to parking regulations. They were pulled over by a marked patrol car containing officers identified by the investigation as Sgt. Timothy Brown and PO Liliana Prendergast. § 87(2)(b) described Sgt. Brown as a white male of medium height with stripes on his sleeve and PO Prendergast as a short Hispanic female with glasses. Approximately 5-7 additional cars, both marked and unmarked, arrived in front of them. Multiple officers drew their guns and pointed them at § 87(2)(b) and § 87(2)(b). This included an unidentified white male officer in plainclothes and additional uniformed officers. § 87(2)(b) first stated that there were a total of two or three officers with their guns pointed, but then clarified that there were actually four or five, all of

whom § 87(2)(b) was unable to describe. § 87(2)(b) was asked to step out of the vehicle; she did so and was subsequently handcuffed and her purse was searched.

§ 87(2)(b) was then instructed to exit the vehicle, place his hands behind his head, and walk backwards toward the officers. He did so but due to his disability was unable to walk quickly. A dark Chevy sedan driven by an officer identified by the investigation as DI Kenneth Lehr pulled up. § 87(2)(b) described DI Lehr as a white male of medium height in plainclothes. § 87(2)(b) tried to explain to DI Lehr, who exited his vehicle, that it was hard for him to walk backwards. DI Lehr replied, "Shut the fuck up and do what they say." § 87(2)(b) was handcuffed by Sgt. Brown, searched, and placed in his patrol car. He was taken to the stationhouse and released with several summonses written by PO Prendergast.

Complainant/Victim: § 87(2)(b)

- *At the time of her interview, § 87(2)(b) was a § 87(2)(b)-old white female, 5'0", weighing 125 lbs, with brown hair and green eyes. § 87(2)(b)*

CCRB Testimony

On September 9, 2011, § 87(2)(b) was interviewed at the CCRB (encl. 5).

On July 21, 2011, at approximately 11:30 a.m., § 87(2)(b) was the passenger in a navy blue van which § 87(2)(b) was driving. They made a left turn onto Avenue A from East 5th Street in Manhattan. They were pulled over and police cars appeared both behind and in front of them. With a megaphone, the officers instructed § 87(2)(b) to step slowly out of the vehicle with her hands behind her head and walk backwards away from the car. § 87(2)(b) did so. However, she became confused and turned around; at this time she saw multiple officers with their guns pointed at her, including an unidentified white male officer of medium height. This officer was standing approximately ten feet behind her. The officers stated, "Don't look back!" § 87(2)(b) may have attempted to reach into her purse at this point; she then placed it on a nearby parked car. § 87(2)(b) was unable to explain the reason she did this but noted that she was flustered by the incident. An officer identified by the investigation as PO Liliana Prendergast and an unidentified female officer approached. § 87(2)(b) described PO Prendergast as a Hispanic female of medium height with glasses. PO Prendergast handcuffed her and patted her down. PO Prendergast searched her purse. The other female officer stood nearby but did not interact with her. § 87(2)(b) was then allowed to leave. She did not see what happened with § 87(2)(b).

NYPD Statements

Subject Officer: SGT. TIMOTHY BROWN

- *Sgt. Brown is a § 87(2)(b)-old white male, 5'7", weighing 170 lbs, with blond hair and blue eyes.*
- *On the date of the incident, Sgt. Brown was the 9th Precinct Patrol Supervisor from 6:55 a.m. until 3:52 p.m. He worked in uniform with PO Prendergast in RMP #4803.*

Memo Book (encl. 6A-C)

Sgt. Brown's memo book notes the stop of § 87(2)(b) and that he was issued multiple summonses.

CCRB Testimony

On November 2, 2011, Sgt. Timothy Brown was interviewed at the CCRB (encl. 6D-E).

On July 21, 2011, at approximately 11:30 a.m., Sgt. Brown observed a blue minivan make an illegal left turn from East 5th Street onto Avenue A in Manhattan. He checked the license plate of the van, which indicated that it should have been a white jeep. In addition, there was a grand larceny condition in the area for motorcycles, which will often be placed inside vans for transport. This made Sgt. Brown suspect that the driver had committed Grand Larceny of an Automobile, a felony. Sgt. Brown requested backup. He instructed the individuals to exit the vehicle. Sgt. Brown drew his gun at this time but did not recall

whether he pointed it. Sgt. Brown's view into the vehicle was obstructed (he thought this might have been due to window tints) and the individuals were initially uncooperative. He had to order them several times to turn off the vehicle, exit the car, and walk backwards before they complied. At this time DI Lehr arrived. DI Lehr, who was alone and in plainclothes, pulled up in an unmarked black Ford Escape at the front of the vehicle and exited his vehicle. § 87(2)(b) began to pay attention to him rather than Sgt. Brown. DI Lehr instructed § 87(2)(b) to follow Sgt. Brown's instructions. Both § 87(2)(b) and § 87(2)(b) were frisked. He recalled that § 87(2)(b) reached into her purse, but was unsure whether it was searched. However, it would probably have been searched in order to make sure there were no weapons inside. § 87(2)(b) was released from the scene while § 87(2)(b) was taken to the stationhouse and released with summonses.

After detaining § 87(2)(b) Sgt. Brown found that the VIN and license plate of the vehicle did not match. He determined that the van belonged to § 87(2)(b) but that the paperwork had lapsed. He did not hear any officers use profanity or state, "Shut the fuck up and do what they say."

Witness Officer: PO LILIANA PRENDERGAST

- *PO Prendergast is a § 87(2)(b)-old Hispanic female, 5'2", weighing 135 lbs, with brown hair and brown eyes. PO Prendergast wears glasses on duty.*
- *On the date of the incident, PO Prendergast was the Sergeant's Operator from 7:00 a.m. until 3:40 p.m. She worked in uniform with Sgt. Brown in a marked RMP.*

Memo Book (encl. 7A-D)

PO Prendergast's memo book notes the stop of § 87(2)(b) and the summonses she issued to him.

Summonses (encl. 7E-G)

PO Prendergast issued § 87(2)(b) summonses for the following offenses: § 87(2)(b)

CCRB Testimony

On October 31, 2011, PO Liliana Prendergast was interviewed at the CCRB (encl. 7H-I). PO Prendergast was promoted to sergeant subsequent to this incident, but will be referred to by her rank at the time of the incident. § 87(2)(g)

PO Prendergast specified that, as they approached, § 87(2)(b) and § 87(2)(b) were fidgeting and that there were boxes and furniture inside the vehicle, obstructing her view. She was unsure whether § 87(2)(b) was frisked or whether her handbag was searched, but did not believe that she did so herself. PO Prendergast did not recall whether any officers drew or pointed their guns during the incident. She did not recall any plainclothes officers responding or any problems with § 87(2)(b) walking backwards to them. She did not hear any officers use profanity or state, "Shut the fuck up and do what they say."

Officers Not Interviewed

§ 87(2)(g)

NYPD Documents

NYPD SPRINT Report (encl. 8A)

The SPRINT notes one individual under arrest for a vehicle infraction. It adds that the commanding officer was on the scene.

9th Precinct Command Log (encl. 8B)

The Command Log notes that § 87(2)(b) was released with summonses.

9th Precinct Roll Call (encl. 8C-D)

The Roll Call lists DI Lehr as the Commanding Officer, Sgt. Brown as the Patrol Supervisor, and PO Prendergast as the sergeant's operator.

Summonses for Incident and Disposition

- § 87(2)(b)

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of October 24, 2011, with regard to the incident (encl. 9).

Civilians' Criminal History

- § 87(2)(b)
[REDACTED]
[REDACTED]
■ [REDACTED]
[REDACTED]
■ [REDACTED]
[REDACTED]
■ [REDACTED]
[REDACTED]
■ [REDACTED]
[REDACTED]
- § 87(2)(b)
[REDACTED]
[REDACTED]
■ [REDACTED]
[REDACTED]
■ [REDACTED]
[REDACTED]
■ [REDACTED]
[REDACTED]
■ [REDACTED]
[REDACTED]
■ [REDACTED]
[REDACTED]

Civilians' CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) or § 87(2)(b) (encl. 2E-F).

Subject Officers' CCRB History

- Sgt. Timothy Brown has been a member of the service for twelve years and there are no substantiated CCRB allegations against him (encl. 2A-B).
- DI Kenneth Lehr has been a member of the service for twenty-four years and there is one substantiated CCRB allegation against him (encl. 2C-D):
 - Complaint #9700248: Abuse (other). As a result of this allegation DI Lehr received instructions.

Conclusion

Identification of Subject Officers

- Sgt. Brown admitted to drawing his gun and possibly pointing it. He also supervised the stops and searches of both § 87(2)(b) and § 87(2)(b). Sgt. Brown is a white male of medium height, § 87(2)(g) [REDACTED]
- § 87(2)(b) and § 87(2)(b) both alleged that numerous officers whom they could not describe pointed guns at them. § 87(2)(g) [REDACTED]
- Sgt. Brown stated that DI Lehr drove up to the front of § 87(2)(b)'s vehicle and spoke with him. Sgt. Brown stated that DI Lehr was in plainclothes in a Ford Escape, § 87(2)(g) [REDACTED]

Investigative Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(b) was stopped for numerous motor vehicle infractions which he received summonses for. § 87(2)(g) [REDACTED] At the time § 87(2)(b) was frisked and searched he was under arrest. § 87(2)(g) [REDACTED].

Allegation A – Force: Sgt. Timothy Brown pointed his gun at § 87(2)(b) and § 87(2)(b)

Allegation B – Force: Officers pointed their guns at § 87(2)(b) and § 87(2)(b)
§ 87(2)(b) and § 87(2)(b) alleged that multiple officers pointed guns at them. Sgt. Brown admitted to drawing his gun and possibly pointing it. *People v. Anderson*, 793 N.Y.S.2d 353 (2005 N.Y. App. Div.) notes that “it is well established that police officers face an inordinate risk when approaching a person seated in an automobile” (encl. 1J). In this case, both Sgt. Brown and PO Prendergast stated that they believed the car to be stolen due to the fact that the license plate was expired and for a different vehicle. Grand Larceny of an automobile is a felony. In addition, both officers stated that their view of the inside of the vehicle was obstructed and PO Prendergast recalled that § 87(2)(b) and § 87(2)(b) were fidgeting. Finally, Sgt. Brown noted that he had to repeat his commands multiple times before they complied. § 87(2)(g) [REDACTED]

Allegation C – Discourtesy: DI Kenneth Lehr spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(b) alleged that DI Lehr told him, “Shut the fuck up and do what they say.” Officers are permitted to use profanity “when it is necessary to gain compliance with an order by an uncooperative suspect” (encl. 1D). This case involved a highly stressful street encounter: the officers suspected § 87(2)(b) of stealing the vehicle and reasonably feared for their safety (see **allegations A and B**). Sgt. Brown stated that § 87(2)(b) was ignoring his commands and focusing on DI Lehr instead; § 87(2)(b) agreed that he was having trouble walking backwards and so spoke to DI Lehr. § 87(2)(g) [REDACTED]

Allegation D – Abuse of Authority: Sgt. Timothy Brown supervised the frisk of § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) alleged that PO Prendergast frisked her. Sgt. Brown confirmed that § 87(2)(b) was frisked. Officers are permitted to conduct frisks when they “reasonably suspect [they] are in danger of physical injury” (encl. 1F). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation E – Abuse of Authority: Sgt. Timothy Brown supervised the search of § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) alleged that PO Prendergast searched her handbag. Sgt. Brown stated that § 87(2)(b) s handbag was likely searched for safety purposes. According to People v. Anderson, 793 N.Y.S.2d 353 (2005 N.Y. App. Div.), the actions of the police must be reasonable “in view of the totality of the circumstances” (encl. 1J). In that case, the court ruled that it was permissible for officers to search the center console of a vehicle after observing an individual reaching into it during a traffic stop. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

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Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date